RECENT IMPORTANT DECISIONS.

ATTACHMENT — GARNISHMENT OF EQUITABLE INTERESTS. — A debtor, by trust deed assented to by all of his creditors, conveyed his property to trustees for the benefit of creditors. The plaintiff garnished the trustees for the interest of one creditor in such trust estate. *Held,* such interest of the creditor is subject to garnishment. *National Surety Co.* v. *Hurley* (Minn. 1915), 153 N. W. 740.

At common law, nothing could be taken under process in which the defendant's estate was merely equitable, because the law courts did not recognize a merely equitable title, and equity courts enforced their decrees by coercion. ROOD, ATTACHMENTS, GARNISHMENTS, AND EXECUTIONS, § 174. But in most states, if not in all, these estates are held liable to process at law without statute, or are made so liable by statute. FREEMAN, EXECUTIONS, §§ 117, 120; DRAKE, ATTACHMENT, § 245; ROOD, GARNISHMENT, §§ 169-176. Thus it has been held that the trustee of a naked trust may be garnished, in *Estate of James McCann, deceased,* 16 Phila. (Pa.) 224; that the income for life of the cestui que trust is attachable, in *The Girard Life Ins. & Trust Co.* v. *Chambers,* 46 Pa. St. 485 (see also *Fidelity Trust Co.* v. *New York Finance Co.,* 125 Fed. 275); that alimony adjudged to the wife against her divorced husband may be reached by garnishment, in *Scheffer* v. *Boy,* 5 Pa. Co. Ct. 158. A bank may be garnished for the excess of the proceeds of notes received as collateral security, and sold by it. *National Bank of Galena* v. *Chase et al,* 71 Ia. 120. A mortgagee, in possession, may be garnished for the excess above the advances made before the service of the summons. *Lieter* v. *Smith,* 70 Ill. 168; *Divver & Gunton* v. *McLaughlin,* 2 Wend. (N. Y.) 596, 20 Am. Dec. 655, and note; *Smith* v. *Menominee County Judge,* 53 Mich. 560; *Hobart et al.* v. *Jouvétt & Trustee,* 6 Cush. (Mass). 105. When garnishment is conducted as an equitable proceeding no reason appears why equitable rights may not thereby be attached as well as legal debts. *Candee* v. *Penniman,* 32 Conn. 228; *Cox* v. *Russell,* 44 Ia. 556; *Root* v. *Davis,* 51 Ohio St. 29; see also 13 MICH. L. REV. 165.

BASTARDY — PRESUMPTION OF LEGITIMACY. — Evidence showed that the father and mother of the plaintiffs had cohabited together for thirty years, during which period the plaintiffs were born. The plaintiffs' right to inherit from the father being in dispute, the court instructed the jury that the burden was upon the plaintiffs to show that they were legitimate. *Held,* that the instruction was erroneous, the appellate court saying, "When the plaintiffs proved that their father and mother occupied the same house and tilled the same soil for thirty years * * * the presumption arose that their children were legitimate. Thereupon the burden was shifted upon the defendants to prove that to be false which seemed to be true." *Cave* v. *Cave* (S. C. 1915), 85 S. E. 244.

In *Blackburn* v. *Crawfords*, 3 Wall. 175, the lower court had instructed that "if the jury find that at any time Mr. Crawford and Elizabeth Taylor lived together as husband and wife; that he acknowledged that she was his wife, and always treated her as such; and recognized the children which she bore during that time as his children, and permitted them to be called by his name, then the presumption of law is in favor of legitimacy of said children." The Supreme Court of the United States in reviewing the instruction said: "Under such circumstances the law makes no presumption," and in *Arnold* v. *Chesebrough*, 46 Fed. 700 and *Osborne* v. *McDonald*, 159 Fed. 791 it was held that proof that the father and mother cohabited together raised no presumption that their children were legitimate, but that it was necessary for the complainant to go ahead and prove the marriage of the ancestors by a preponderance of evidence. However, the state courts which have passed upon the question adhere to the rule that when the parentage of a child is shown along with cohabitation of the parents, then the presumption is that the offspring is legitimate. *In re Kennedy*, 143 N. Y. Supp. 404; *Dunn* v. *Garnet*, 129 Ky. 728, 112 S. W. 841; *Locust* v. *Caruthers*, 23 Okla. 373, 100 Pac. 520; *Vaughan* v. *Rhodes*, 2 McCord, 227, 13 Am. Dec. 713; *Skidmore* v. *Harris*, 157 Ky. 756, 164 S. W. 98; *In re Matthew's Estate*, 37 N. Y. Supp. 308.

BILLS AND NOTES—PAYMENT OF FORGED INSTRUMENT.—A check on which both the signatures of drawer and endorser were forged, was drawn upon the plaintiff bank. In the course of business it was sent through the defendant bank—which cashed it—to the plaintiff with the endorsement "all prior endorsements guaranteed." It was the custom for the drawee banks to take such checks in reliance upon the due diligence supposed to be exercised by the first bank in verifying signatures. The plaintiff, in reliance upon such custom, cashed the check, and upon discovery of the forgeries seeks to recover the money paid to the first bank. *Held*, the plaintiff cannot recover. *State Bank* v. *Cumberland Savings & Trust Co.* (N. C. 1915), 85 S. E. 5.

The decision is based upon the doctrine of estoppel that permits no recovery by the drawee of a payment made on a forged instrument. But as there is a contrary doctrine—considered more equitable—permitting a recovery when the person from whom it is allowed is placed in no worse a position than he would have been if payment in the first place had been refused—see 10 MICH. L. REV. 226, and 9 MICH. L. REV. 63—that fact combined with the custom concerned in the instant case, and the endorsement guaranteeing all prior endorsements, would seem to be grounds for concluding that a different decision would have been more satisfactory in a case of first impression. As to a custom, it has been held that a drawee bank is entitled, by virtue of a general custom among banks, to rely upon the presumption that the cashing bank in taking the instrument directly from a stranger exercised due caution in examining the stranger's right to the note, and can recover the money paid by it to the cashing bank when the check was forged, and the cashing bank had neglected to use the caution required by the cus-